

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CGSA, INC. FOR	)	
ISSUANCE OF A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY TO CONSTRUCT	)	
AN ADDITIONAL CELL SITE IN LEXINGTON,	)	
KENTUCKY FOR THE PROVISION OF DOMESTIC	)	CASE NO. 97-072
PUBLIC CELLULAR RADIO	)	
TELECOMMUNICATIONS SERVICE TO THE	)	
PUBLIC IN FAYETTE COUNTY, KENTUCKY AND	)	
THE LEXINGTON MSA	)	

O R D E R

On February 18, 1997, Kentucky CGSA, Inc. d/b/a BellSouth Mobility, Inc. ("BellSouth Mobility") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The application was amended on September 30, 1997 to reflect a new location for the proposed construction. As amended, the proposed facility consists of a monopole antenna tower not to exceed 160 feet in height, with attached antennas, to be located at 3459 Buckhorn Drive, Lexington, Fayette County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 58' 39.76" by West Longitude 84° 27' 30.84".

BellSouth Mobility has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the application, the design of the tower and foundation conforms to applicable nationally

recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the proposed facility's construction is exempt from local zoning ordinances. However, BellSouth Mobility has notified the Lexington-Fayette Urban County Government ("LFUCG") Planning and Zoning Commission of the proposed construction. The LFUCG filed comments opposing the proposed construction and ultimately intervened in this proceeding. BellSouth Mobility has filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

BellSouth Mobility has filed notices verifying that each person who owns property within 500 feet of the proposed facility has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to intervene. In addition, BellSouth Mobility has posted notice of the proposed construction in a visible location for at least two weeks after filing its application. The Commission received numerous protests regarding the original location for the proposed construction and several parties intervened including the LFUCG. A hearing was scheduled but later cancelled at the request of BellSouth Mobility to enable it to search for an alternative location.

Subsequently, BellSouth Mobility amended its application and relocated the proposed facility to adjacent property that, in its opinion, would be less objectionable to area residents. The Commission continued to receive protests regarding the proposed

construction and several area residents intervened. The LFUCG maintained its objection regarding the amended application and a hearing was held on March 26, 1998.

At the hearing, BellSouth Mobility provided extensive evidence in support of the proposed construction including propagation studies, tower design criteria, and details of its consideration of alternative site locations. BellSouth Mobility maintains that the proposed construction is necessary to alleviate blocked calls and coverage problems in the area. The prescribed search area consists primarily of residential property. BellSouth Mobility contends that the commercial property selected is the most appropriate location within the search area from which adequate service can be provided. BellSouth Mobility offered to provide extensive screening to the rear of the subject property in an attempt to minimize any aesthetic impact.

The LFUCG contends that the proposed construction will have a severe impact on the neighborhood and that other viable sites exist within the search area that could be used to provide service. Furthermore, the LFUCG claims that the proposed construction is out-of-character for the area and does not comport with zoning and overall land use restrictions.

Although several area residents intervened in this matter, only one resident appeared during the hearing. The resident's primary objection concerned the aesthetic impact of the proposed construction and its effect on property value. The resident also noted concerns regarding the general safety of the structure.

The Commission finds that the proposed construction is necessary and that the selected location is appropriate. Other locations considered by BellSouth Mobility would

produce a similar impact on the surrounding areas, thus, no better alternative exists. Although BellSouth Mobility has attempted to minimize the aesthetic impact on the area, the Commission further finds that screening in compliance with local zoning regulations should be placed along the rear of the subject property.

LFUCG has moved to strike BellSouth Mobility's exhibits of coverage areas filed after the hearing. The exhibits purport to be computer coverage maps. LFUCG's motion contains insufficient information to consider the allegation that the exhibits vary from those submitted by BellSouth Mobility at the hearing. LFUCG's motion is denied. The Commission has given these coverage maps their due weight. Moreover, other evidence presented has convinced the Commission of the need for this facility and that a more appropriate location could not be found.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, BellSouth Mobility should notify the Commission if it does not use this antenna tower to provide service in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by BellSouth Mobility.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that BellSouth Mobility should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed facility.

IT IS THEREFORE ORDERED that:

1. BellSouth Mobility is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 160 feet in height, with attached antennas, to be located at 3459 Buckhorn Drive, Lexington, Fayette County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 58' 39.76" by West Longitude 84° 27' 30.84".

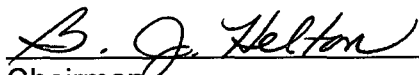
2. BellSouth Mobility shall provide reasonable screening in compliance with local zoning regulations along the rear of the subject property.

3. LFUCG's motion to strike or in the alternative to reopen the hearing shall be denied.

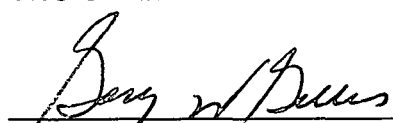
4. BellSouth Mobility shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 18th day of August, 1998.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director